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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 77-1560

PARISH OF EAST BATON ROUGE,

Petitioner.

v.

JAMES F. PIERSON, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, FIRST CIRCUIT, OF THE STATE OF LOUISIANA

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OCTOBER TERM, 1978

No.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, FIRST CIRCUIT, OF THE STATE OF LOUISIANA

The petitioner, PARISH OF EAST BATON ROUGE, LOUISIANA, respectfully prays that a writ of certiorari issue to review the opinion and judgment of the Court of Appeal, First Circuit, State of Louisiana, rendered in these proceedings on October 17, 1977.

OPINIONS BELOW

The opinion of the Court of Appeal of October 17, 1977, is reported at 353 So.2d 726; it is reproduced at Appendix A, infra., p. 8. The Court of Appeal granted a rehearing, which appears at Appendix B, infra., p. 11. The original opinion of October 17, 1977, was reinstated by per curiam decree of the Court of Appeal of December 28, 1977, which appears at Appendix C, infra., p. 11. Timely application for Writ of Certiorari or Review to the Supreme Court of Louisiana was made, and the application was denied February 17, 1978, which appears at Appendix D, infra., p. 11. The Court of Appeal's opinion upholds the judgment of the Nineteenth Judicial District Court rendered December 29, 1976, which trial court's opinion appears at Appendix E, infra., p. 12.

JURISDICTION

The opinion of the Court of Appeal, First Circuit, of the State of Louisiana, entered October 17, 1977, and reinstated December 28, 1977, was made the subject of a timely Application for Writ of Certiorari or Review to the Supreme Court of Louisiana. Such application was denied February 17, 1977. See Appendix D, infra., p. 11. This Application for Writ of Certiorari to the Supreme Court of the United States was filed less than ninethy days from February 17, 1978. The jurisdiction of the Court is invoked under 28 U.S.C., §1257(3).

QUESTIONS PRESENTED

The Parish of East Baton Rouge paved all streets in an exclusive residential area. All streets received a uniform width, single-lane pavement, except a boulevard which received two lanes of pavement and a boulevard neutral ground. A uniform front foot assessment was levied on all abutting properties in the area except along the boulevard, which assessments were greater than along the single-lane streets. The Court of Appeal's decision struck down plaintiffs' boulevard assessments because they were not the uniform assessment. The question presented relates to the constitutionality of a uniform assessment on properties receiving substantially dissimilar benefits. That question is:

> Whether constitutional standards of equal protection and due process allow a state to levy a local or special assessment for street paving improvements not in accordance with benefits received?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV, §1:

" * * * nor shall any state deprive any person of life, liberty, or property without due process of law * * * "

Constitution of the United States, Amendment XIV, §1:

" * * * nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws * * * "

STATEMENT OF FACTS

In 1968, the Parish of East Baton Rouge undertook a program to pave all streets in an exclusive residential area of the City of Baton Rouge. All of the streets are of the same width, except a boulevard. After conducting extensive public hearings, a construction contract was awarded to the low bidder. The total cost of the project was determined, and the Parish elected to pay 78% thereof. The remaining 28% was levied as local or special assessments against all properties in the subdivision area on a front foot basis. All lots were assessed $6.00 per front foot, except the boulevard, which was assessed at $11.00 per front foot. The boulevard paving improvements included two lanes of pavement almost twice as wide as the single-lane streets. Plaintiffs are property owners on the boulevard who brought suit to have assessments levied for paving of the boulevard declared invalid. The Nineteenth Judicial District Court declared such boulevard assessments invalid. The Court of Appeal held that total assessments to be made in connection with the paving project had to be prorated among all properties which benefited from the construction contract, whether single lane or boulevard, even though the contract itself was broken down into a detailed explanation of costs applicable to single lane streets and to the boulevard.

REASONS FOR GRANTING THE WRIT

A special assessment street paving constitutional issue has not been presented to this Court for more than a generation. The rule has been long established that states may provide for the levy of local or special assessments on abutting properties to pay the cost of street paving improvements. *Walston* v. *Nevin*, 9 S.Ct. 192, 128 U.S. 578; *Village of Norwood* v. *Baker*, 19 S. Ct. 187, 172 U.S. 269; *French* v. *Barber Asphalt Paving Co.*, 21 S.Ct. 625, 181 U.S. 324; *Chadwick* v. *Kelly*, 23 S. Ct. 175, 187 U.S. 540; *Martin* v. *District of Columbia*, 27 S. Ct. 440, 205 U.S. 135; *Butters* v. *City of Oakland*, 44 S.Ct. 62; *Roberts* v. *Richland Irrigation District*, 53 S.Ct. 519.

In *Roberts* v. *Richland Irrigation District*, supra, the Court said:

> "[1,2] The power of a state to create local improvement districts with authority to lay taxes according to value, acreage, front foot, or benefits is definitely recognized by this court. Also that the action of such a district in apportioning the burden of taxation cannot be assailed under *the 14th Amendment unless palpably arbitrary and a plain abuse."

Local or special assessment cases have not occupied the docket of this Court for many years for the reason that the states have understood and applied the principle that cost must have a reasonable relationship to benefits received.

In the present case, there is a manifest and gross disparity between a uniform front foot cost and benefits to be received. The Court admitted this in its decision:

> "We recognize that the assessment as originally made by the Parish is *certainly fairer* to the property owners and in line with benefits received by them." (Emphasis supplied.)

The only reason given by the Court of Appeal for its admittedly inequitable decision is that the Louisiana Statute is susceptible of only one interpretation.

The Supreme Court of Louisiana split 3 to 4 on the granting of the writ. Three Justices, Sanders, Dixon, and Marcus, including the Chief Justice, "would grant the writ".

The undisputed facts are that the boulevard is to receive two lanes of pavement, each twenty-two feet wide (44 feet total) with four lanes of concrete curb and gutter, together with a thirty-foot neutral ground. The remaining streets in the project are paved with one lane only twenty-three feet wide with curb and gutter.

There is no extenuating circumstance or rational basis to justify the preferential treatment of the boulevard by the Court. The boulevard affords no special advantage to the improvement area. Several streets in the improvement area serve as arteries connecting the improvement area with other parts of the Parish. No contention is made in this respect by the plaintiffs.

Plaintiffs' stricken assessments represent a cost that somehow must be paid. In order to comply with the Court of Appeal's decision, this payment must come from increased assessments on the single-lane street property owners or the people of the Parish in general could contribute sums in addition to the 68% already paid. The Parish has more pressing things to use its general funds for.

The Parish respectfully urges that the apportionment of costs ordered by the Court of Appeals is "palpably arbitrary and a plain abuse" as prohibited in *Richland Irrigation District*, supra.

Petitioner respectfully urges that writs should be granted herein reinstating the original assessments on the boulevard. The present case does not seek to require that costs and benefits be matched with fine precision but rather that gross and manifest disparities be disallowed under constitutional principles of equal protection and due process.

The Court of Appeal found that the " * * * assessment as originally made by the Parish is certainly fairer to the property owners and in line with benefits received by them." Petitioner urges that said original assessments are valid and that the uniform assessments required by the Court of Appeal are unconstitutional.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Court of Appeal, First Circuit.

Respectfully submitted,

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APPENDIX A

FIRST CIRCUIT COURT OF APPEAL
STATE OF LOUISIANA

NO. 11497

JAMES F. PIERSON, JR., ET AL

V.

PARISH OF EAST BATON ROUGE

ON APPEAL FROM THE 19TH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, HONORABLE DANIEL W. LE BLANC, JUDGE

OCTOBER 17, 1977

BEFORE: LANDRY, SARTAIN, AND ELLIS, JJ

ELLIS, J:

Plaintiffs herein are owners of parcels of land abutting Sunset Boulevard in Baton Rouge. They bring this suit against the Parish of East Baton Rouge to have declared invalid assessments levied against their various properties for the paving of Sunset Boulevard. From a judgment declaring the assessments invalid, the Parish has appealed.

The paving project was carried out under the provisions of R.S. 33:3301 et seq., and covers a number of streets in University Acres Subdivision. All of the streets in the subdivision as improved are 23 feet wide from curb to curb, except Sunset, which has two 22 foot roadways divided by a 30 foot neutral ground.

The notices of intention, and the resolutions ordering the paving in University Acres, were done for each street separately; that is, nine separate notices were published and nine separate resolutions were adopted. However, when bids were asked, all of the streets were combined into one project with nine different

sections, one of which consisted of the divided portions of Sunset.

The bids received for the project were itemized by sections so that the cost of paving and drainage for each section was ascertainable. After receipt of the final engineering report on the project, the Parish Council determined its participation in the project, and assessed the properties abutting on the divided portions of Sunset Boulevard at $11.00 per front foot. Properties fronting on the other, single streets, were assessed at the rate of $6.00 per front foot. It was determined by the Council that these properties had benefitted no less than the amount of their respective assessments as a result of the paving project. It is clear that the assessments levied were determined substantially on the basis of the actual cost of paving each street, and that the assessments on Sunset were larger because it is a divided double street.

Plaintiffs claim that the method used in computing their assessments is in violation of the following provisions of R.S. 33:3306, which states in part:

> "C. After thirty days has elapsed from the date of the mailing of said notice of the proposed assessments, the governing authority shall adopt an ordinance levying a local or special assessment on each lot or parcel of real estate abutting the street, road, sidewalk, or alley to be improved, including such lots or parcels of real estate as may be located wholly or partly outside of the municipal limits or boundaries, in proportion that its frontage bears to all the abutting lots or parcels of real estate to be improved in accordance with the contract awarded or in accord with the cost of improvements, when undertaken by the municipality. The total of all such local or special assessments shall represent the total cost of the improvement, including street intersections, engineer's and attorney's fees, and all other costs incidental to the work, after deduction therefrom of the amount of participation, if any, made by the municipality as hereinafter provided in R.S. 33:3318."

The total cost of the University Acres project was $1,065,303.87, and the Parish participated in the project to the extent of $834,586.62, leaving $230,717.25 to be assessed to the property owners. The total front footage assessed in the entire project was 38,802.71.

Plaintiffs contend that under the language of R.S.33: 3306, above quoted, each property owner should be assessed an amount per front foot derived from dividing $230,717.25 by 38,802.71, or $5.94. They argue that, since the provisions of the law were not strictly followed, the ordinance is invalid as to them.

The Parish argues that, since the contract itself is broken down into a detailed explanation of the costs applicable to each street in the contract, it should not be considered as a lump sum contract, but rather one in which the cost for each unit of work is separately itemized. It is further argued that to follow the method of assessment argued for by plaintiffs would result in an unfair advantage to the property owners on the boulevard, who would bear proportionately less of the cost of the improvement in front of their property while realizing a greater benefit therefrom.

Article 13 of the Civil Code provides:

> "When a law is clear and free from all ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit."

As we read R.S. 33:3306, supra, it is clear that it is susceptible of only one interpretation if the words thereof are given their "usual signification" as required by Article 14 of the Civil Code. We find that the total assessment to be made must be prorated among all of the properties which benefit from the contract, and not on a street by street basis.

We recognize that the assessment as originally made by the Parish is certainly fairer to the property owners, and in line with the benefits received by them. However, we can sustain the

validity of the assessment only by ignoring the clear and specific language of the statute.

The judgement appealed from is therefore affirmed. The Parish shall pay all costs for which it may be liable under the law.

AFFIRMED.

APPENDIX B

"*On Application For Rehearing.*

Rehearing granted, limited to briefs heretofore filed and such other briefs as counsel for the parties shall care to file on or before December 5, 1977, at which time the matter shall be considered as submitted.

Baton Rouge, Louisiana Nov[ember] 21[,] 1977..."

APPENDIX C

ON REHEARING Dec 28 1977

PER CURIAM.

After reconsideration of the issue herein presented, we are convinced that our original opinion is correct. For the reasons therein set forth, the judgment rendered therein is reinstated."

APPENDIX D

In re: Parish of East Baton Rouge, applying for certiorari, or writ of review, to the Court of Appeal, First Circuit, Parish of East Baton Rouge.

Writ Denied.

AT JR
FWS
PFC
JLD

SANDERS, C.J., DIXON and MARCUS, J.J., would grant the writ.

APPENDIX E

WRITTEN REASONS FOR JUDGEMENT

This is an action by plaintiffs to have Ordinance No. 3532, adopted by the City-Parish Council on March 24, 1971, declared invalid as it pertains to the assessments levied against their respective properties. The Parish filed exceptions of No Cause and No Right of Action and of Prescription. Neither of the parties briefs addressed the exception of No Cause and No Right of Action. However, on reading the pleadings and listening to the evidence, it is clear to the Court that a cause of action has been well pleaded and that all plaintiffs have established their right to bring this action.

Regarding the plea of prescription, it is well established that the ordinance complained of was adopted on March 24, 1971. Suit was filed April 23, 1971. Section 3319 of title 33 of our Revised Statutes sets forth a 30 day period from publication after which no contest of proceeding shall be begun. Plaintiffs filed their suit within the prescriptive period. There was no evidence introduced to show the date of publication. This exception is overruled.

The Parish contends that the plea of prescription relates to earlier ordinances adopted by the council. But, it is clear to the Court that plaintiffs' action is aimed at the ordinance which fixed the assessments against their property.

Plaintiffs are owners of property which fronts on Sunset Boulevard, the only boulevard in University Acres and the only boulevard included in the one contract. They have been assessed at $11.00 per front foot while the owners of property fronting on non-boulevard streets were assessed considerably lower.

The evidence reveals that this paving project was commenced under the authority of R.S. 33:3301 et seq.. Under R.S. 33:3318, the local government elected to participate in the funding, and did so, to a considerable extent.

The first thrust of plaintiffs' action is that the defendant did not comply with R.S. 33:3306 which reads in part, as follows:

> After thirty days has elapsed from the date of the mailing of said notice of the proposed assessments, the governing authority shall adopt an ordinance levying a local or special assessment on each lot or parcel of real estate abutting the street, road, sidewalk, or ally to be improved, including such lots or parcels of real estate as may be located wholly or partly outside of the municipal limits or boundaries, *in proportion that its frontage bears to all the abutting lots or parcels of real estate to be improved in accordance with the contract awarded* or in accord with the cost of improvements, when undertaken by the municipality. The total of all such local or special assessments shall represent the total cost of the improvement, including street intersections, engineer's and attorney's fees, and all other costs incidental to the work, after deduction therefrom of the amount of participation, if any, made by the municipality as hereinafter provided in R.S. 33:3318.

There is no doubt that only one contract was awarded for this entire project. Defendant has introduced considerable evidence showing how they arrived at their cost figures. Their efforts to be fair are unquestioned and their participation in the project is commendable.

However, nowhere in the statutes or cases can the Court find any authority to levy assessments in any manner other than in R.S. 33:3306.

Perhaps legislative authority should be given to local governments to levy assessments in a different way so as to provide what they would consider a more equitable allocation of the cost of the project. But that is debatable and speculative. Suffice it to say that plaintiffs have proven their case by showing that the Parish of East Baton Rouge did not follow and comply

with R.S. 33:3306 and for that reason the Court declares that Ordinance no. 3532, adopted March 24, 1971, is invalid and unenforceable insofar as it affects all of the Plaintiffs.

Plaintiffs have advanced other contentions in their pleadings. However, in view of the above, the Court sees no purpose in a discussion of those contentions. The Court feels that the law is clear and that it was not followed by the defendant.

Judgment will be signed accordingly.

Baton Rouge, Louisiana, this 29th day of December, 1976.

s/ Daniel W. LeBlanc
DANIEL W. LeBLANC, JUDGE
CIVIL DIVISION H
19TH JUDICIAL DISTRICT COURT